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October 22, 2013

*Via ECF*

The Honorable Denise L. Cote  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *NCUA v. Morgan Stanley & Co.*, No. 13-cv-6705  
*NCUA v. Bear, Stearns & Co.*, No. 13-cv-6707  
*NCUA v. Wachovia Capital Markets LLC*, No. 13-cv-6719  
*NCUA v. Goldman, Sachs & Co.*, No. 13-cv-6721  
*NCUA v. RBS Securities, LLC*, No. 13-cv-6726  
*NCUA v. Barclays Capital Inc.*, No. 13-cv-6727  
*NCUA v. UBS Securities, LLC*, No. 13-cv-6731  
*NCUA v. Credit Suisse Securities (USA) LLC*, No. 13-cv-6736

Dear Judge Cote:

I write on behalf of the National Credit Union Administration Board, as liquidating agent for Southwest and Members United Corporate Credit Unions (“NCUA”), in the above captioned actions, in response to Defendants’ joint letter dated October 17, 2013 (but filed on October 18, 2013).

Defendants do not dispute that designating a lead case, as this Court did in the *FHFA* actions, is the most efficient and expedient way to resolve the motions to dismiss in these cases. Defendants request, however, that any decision regarding the designation of a lead case, as well as all responsive pleadings, be stayed until after the Judicial Panel on Multidistrict Litigation (“JPML”) resolves Defendants’ pending motion to transfer most – but not all – of these actions pursuant to 28 U.S.C. § 1407.

Defendants’ requests are unsound for at least three reasons. *First*, this Court has already rejected Defendants’ requests to stay proceedings pending the MDL transfer motion. *See Order, NCUA v. Credit Suisse Sec. (USA) LLC*, No. 13-6736, ECF No. 9 (S.D.N.Y. Oct. 15, 2013) (denying request to extend responsive pleadings until after the JPML’s decision); *Order, NCUA v. UBS Sec., LLC*, No. 13-6731, ECF No. 13 (S.D.N.Y.

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Oct. 16, 2013) (same). Defendants offer no factual or legal basis to reconsider that decision.

Nor do the across-the-board stays that Defendants seek appear productive, for these actions are likely to remain with this Court. Each Defendant has offices in this District; many have their principal place of business in New York; and most of the Defendants' witnesses and evidence are located in or near this District. Assuming that an MDL is appropriate, because New York is the "center of gravity for this litigation," it is likely that this Court will be the transferee district. *See In re Municipal Derivatives Antitrust Litig.*, 560 F. Supp. 2d 1386, 1387 (J.P.M.L. 2008). That is especially true where, as here, this Court has developed extensive subject-matter expertise from overseeing the complex substantive and discovery issues in the related *FHFA* actions.

Even in the unlikely event that these actions were transferred to another district, it would be efficient to brief the motions to dismiss in the near future. These cases involve claims under the Illinois and Texas Blue Sky laws, and the Securities Act of 1933. The blue sky claims will be governed by State law regardless of where these actions may be transferred. Moreover, there is now a substantial and uniform body of federal case law applying the Securities Act to RMBS litigation. Compare *FHFA v. UBS Americas, Inc.*, 858 F. Supp. 2d 306 (S.D.N.Y. 2012) with *NCUA v. Credit Suisse Sec. (USA) LLC*, -- F. Supp. 2d --, 2013 WL 1411769 (D. Kan. Apr. 8, 2013) (substantially similar applications of Securities Act to RMBS litigation).

*Second*, Defendants' joint request for a stay has no application to *Goldman Sachs* because that case is not subject to the pending JPML motion. Because *Goldman Sachs* has not requested transfer, there is no reason to defer proceedings in that case based on the JPML motion. *Goldman Sachs* has indicated that it intends to file a motion to compel arbitration, and that motion – which would be based on unique facts – should be filed by November 13, 2013.

*Third*, Defendants offer no basis to defer or dispute designating *Morgan Stanley* as the lead case. *Morgan Stanley* does not contest that it is fairly representative of the other actions because it asserts claims under all three statutes at issue – the Illinois Blue Sky law, the Texas Blue Sky law, and the Securities Act – while other cases do not. Nor has any Defendant suggested a more appropriate candidate for lead case.

Accordingly, NCUA respectfully requests that *Morgan Stanley* be designated as the lead case for the efficient management of these actions; that the Court order *Morgan Stanley* to submit its motion to dismiss by November 13, 2013; and that responsive pleadings in the other cases be stayed pending the Court's ruling on that motion to dismiss, except for any other preliminary motions that can be resolved now, such as motions to compel arbitration.

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Respectfully submitted,



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cc: Counsel of Record (via ECF)